1992

Stephen John Currier v. Tamara Holden : Brief of Appellee

Utah Court of Appeals

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Ved 2

IN THE UTAH COURT OF APPEALS

STEPHEN CURRIER, Petitioner-Appellant,	:	
v.	:	Case No. 920467-CA
TAMARA HOLDEN, Warden, Respondent-Appellee.	:	Priority No. 2

BRIEF OF APPELLEE

APPEAL FROM A DISMISSAL OF A WRIT OF HABEAS CORPUS,
IN THE SEVENTH DISTRICT COURT, IN AND FOR CARBON COUNTY,
STATE OF UTAH, THE HONORABLE BOYD BUNNELL, PRESIDING

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	:	
Petitioner-Appellant,	:	
	:	
v.	:	Case No. 920467-CA
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BRIEF OF APPELLEE

JURISDICTION AND NATURE OF PROCEEDINGS

This is an appeal from the district court's dismissal of a petition for writ of habeas corpus. This Court has jurisdiction to hear the appeal pursuant to Utah Code Ann. section 78-2a-3(2)(g)(Supp. 1992).

STATEMENT OF ISSUES PRESENTED ON APPEAL

I. **IS THE THREE MONTH STATUTE OF LIMITATIONS OF UTAH CODE ANN. § 78-12-31.1 (1992) A CONSTITUTIONAL PROCEDURAL LIMITATION?**

II. **DID THE SEVENTH JUDICIAL DISTRICT COURT PROPERLY DISMISS THE PETITION BASED ON THE STATUTE OF LIMITATIONS OF SECTION 78-12-31.1?**

STANDARD OF APPELLATE REVIEW

In considering an appeal from a dismissal of a petition for a writ of habeas corpus, no deference is accorded the lower court's conclusions of law that underlie the dismissal of the petition.

Rather, the Court reviews such determinations for correctness. Termunde v. Cook, 786 P.2d 1341, 1342 (Utah 1990)(citing Fernandez v. Cook, 783 P.2d 547 (Utah 1989)).

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

Any relevant text of constitutional provisions, statutes, or rules pertinent to the resolution of the issues presented is contained in the body of this brief.

STATEMENT OF THE CASE

On October 3, 1988, petitioner pleaded guilty to sexual abuse of a child, a second degree felony. See Case No. 2434, Seventh District Court. On April 3, 1989, the Honorable Boyd Bunnell sentenced petitioner to eighteen months probation. The court further sentenced him to serve six months in the Carbon County Jail as a condition of his probation. Id. Petitioner's two attempts to withdraw his guilty plea were unsuccessful. (R. 61-62). Petitioner filed an appeal which he ultimately abandoned, against the advice of his counsel. (Id.). Petitioner's codefendant in the underlying criminal matter executed an affidavit on October 21 1991 in which he recanted his damning testimony against petitioner. Br. of App. at 7-8. Petitioner filed a petition for writ of habeas corpus on April 16, 1992, some six months later, claiming ineffective assistance of counsel with respect to the plea agreement and sentencing. (R. 2). Br. of App. at 6. The State filed a motion to dismiss based on the statute of limitations

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[1]References to the "State" are to the respondent warden.

contained in Utah Code Ann. section 78-12-31.1 (1992). The trial court granted the State's motion to dismiss on June 12, 1992, and the final order was entered on June 22, 1992. (R. 88-90).

This Court denied summary disposition on August 31, 1992. Thereafter, petitioner filed his brief, claiming that: 1) the district court improperly dismissed his petition pursuant to the three-month statute of limitations; and 2) the statute of limitations is unconstitutional.

STATEMENT OF FACTS

A statement of facts beyond those set forth in the above Statement of the Case is not necessary to resolve the issues presented on appeal.

SUMMARY OF THE ARGUMENT

The three-month statute of limitations contained in Utah Code Ann. section 78-12-31.1 (1992) is a constitutionally permissible procedural limitation under the Utah Constitution. This section does not suspend the writ of habeas corpus, but merely procedurally limits the time period when a petition may be filed. The writ remains available to any person who acts diligently and files a claim within the specified time-frame.

Moreover, section 78-12-31.1 does not violate Article VIII, section 4 of the Utah Constitution. That provision grants the Utah Supreme Court the authority to establish procedural court rules. Section 78-12-31.1 is not a rule of procedure, but a statute that procedurally limits the filing of habeas petitions. Therefore,

section 78-12-31.1 is not governed by Article VIII, section 4. Additionally, Article VI, section 1 of the Utah Constitution grants the Utah Legislature the power to create the laws governing the State of Utah. Therefore, section 78-12-31.1 is a constitutional legislative enactment, pursuant to Article VI, section 1.

Contrary to petitioner's assertions, section 78-12-31.1 allows for excusable delay, since it is a procedural bar only as to grounds a petitioner should have been aware of through the exercise of reasonable diligence. The mere fact that petitioner's claims did not fall under this condition does not mean that excusable delay is not an available exemption.

Furthermore, section 78-12-31.1 is a reasonable time-period as applied to petitioner's case. Petitioner's claims were known or should have been known to him, through the exercise of reasonable diligence, within 90 days of his sentencing. Therefore, section 78-12-31.1 did not unreasonably limit petitioner's ability to file a petition for writ of habeas corpus.

The foregoing demonstrates that the district court properly dismissed petitioner's petition pursuant to section 78-12-31.1, since petitioner filed his petition more than 36 months after his sentencing.

ARGUMENT

I. THE THREE-MONTH STATUTE OF LIMITATIONS CONTAINED IN UTAH CODE ANN. § 78-12-31.1 (1992) IS A CONSTITUTIONAL PROCEDURAL LIMITATION.

Utah Code Ann. section 78-12-31.1 (1992) is a constitutionally permissible procedural limitation under the Utah Constitution.[2] Section 78-12-31.1 provides that an action for habeas corpus relief must be commenced within three months from the time the grounds are known to petitioner, or "in the exercise of reasonable diligence should have been known to petitioner or counsel for petitioner."

Petitioner claims that the statute is an unreasonable, non-procedural enactment which violates the Utah Constitution. However, mere allegations that a statute is unconstitutional will not meet the requisite burden necessary to invalidate it. "[L]egislative enactments are endowed with a strong presumption of validity and will not be declared unconstitutional unless there is no reasonable basis upon which they can be construed as conforming to constitutional requirements." City of Monticello v. Christensen, 788 P.2d 513, 516 (Utah 1990). "[W]hen an act of the Legislature is attacked on grounds of unconstitutionality the question presented is not whether it is possible to condemn the act, but whether it is possible to uphold it." Lehi City v.

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[2]Neither this Court nor the Utah Supreme Court has ever ruled on the constitutionality of section 78-12-31.1 in a majority opinion. However, the issue is currently pending before the Utah Supreme Court (McClellan v. Holden, Case No. 920249), and it was briefly discussed in the concurring and dissenting opinions of Justice Zimmerman and Justice Stewart in Smith v. Cook, 803 P.2d 788, 796-797 (Utah 1990).

Meiling, 48 P. 530, 535 (Utah 1935). Considering the presumptions of statutory validity, petitioner has not established that section 78-12-31.1 violates the Utah Constitution.

A. Section 78-12-31.1 Is A Constitutional Procedural Limitation Which Does Not Suspend The Right To Petition The Court For Habeas Corpus Relief.

Petitioner claims that section 78-12-31.1 is not a procedural limitation, implying that section 78-12-31.1 suspends the right to petition the court for habeas relief. Article I, Section 5 of the Utah Constitution states: "The privilege of the writ of habeas corpus shall not be suspended, unless, in case of rebellion or invasion, the public safety requires it." The question is whether the 90-day limitation period attached to habeas corpus proceedings amounts to a suspension of the writ of habeas corpus.

Contrary to petitioner's assertions, the procedural limitation period does not suspend the writ. Considering this very issue, several states have found that statutes of limitation on filing habeas corpus petitions do not "suspend" the constitutional right to petition for habeas corpus relief. See Bartz v. State of Oregon, 825 P.2d 657 (Or. App. 1992); Davis v. State, 443 N.W.2d 707 (Iowa 1989). Such statutes are viewed as mere procedural limitations which do not unconstitutionally suspend the writ.

In Bartz, the Oregon Court of Appeals affirmed the dismissal of a habeas petition on the ground that the petition was not timely filed. The court held that Oregon's 120-day statute of limitations on habeas corpus petitions did not violate Article 1, Section 23 of

the Oregon Constitution, which is almost identical to Article I, Section 5 of the Utah Constitution, prohibiting suspension of the writ of habeas corpus. The Oregon court concluded that the statute of limitations imposed only procedural conditions on a claim for post-conviction relief, and did not dilute the substance of the writ. Therefore, the statute of limitations did not impermissibly suspend the writ of habeas corpus. Bartz, 825 P.2d at 660.

In another similar case, the Iowa Supreme Court concluded that its statute of limitations governing habeas corpus actions was constitutional under the Iowa Constitution. Davis, 443 N.W.2d at 709. While the constitutions of Iowa and Utah are not identical, they both prohibit suspension of the writ of habeas corpus. The Iowa Supreme Court first recognized that the state legislature had authority to place reasonable time restrictions on the filing of civil actions, and that such limitations on the right to seek a writ of habeas corpus are constitutional under both the United States Constitution and the Iowa Constitution. Davis, 443 N.W.2d at 709-710. The court concluded that the statute of limitations did not unconstitutionally suspend the right to habeas corpus relief under the Iowa Constitution.

This Court should follow the analysis of the Iowa and the Oregon courts and conclude that the statute of limitations is not a suspension of the writ of habeas corpus, but merely a procedural limitation on when the right may be asserted. Attaching a limitation period on the time for filing a habeas petition does not unconstitutionally suspend the writ. The writ remains available to

any person who acts with diligence and files a claim within the time period specified by law. Additionally, the right to petition is tolled indefinitely until the violation giving rise to a claim becomes known or in the "exercise of reasonable diligence should have been known." Utah Code Ann. § 78-12-31.1. Thus, the provision does not bar anyone from actually filing a petition with the courts, but merely creates a procedural bar if the petition is not timely filed.

B. Section 78-12-31.1 Does Not Violate Article VIII, Section 4 of the Utah Constitution.

Petitioner claims that if section 78-12-31.1 is a procedural limitation, it violates Article VIII, Section 4 of the Utah Constitution. Article VIII, Section 4 delineates the rule-making power of the Utah Supreme Court, stating in pertinent part, "[t]he Supreme Court shall adopt rules of procedure and evidence to be used in the courts of the state and shall by rule manage the appellate process." Utah Const. art. VIII, § 4. Petitioner claims that Article VIII, Section 4 grants the Utah Supreme Court the sole power to create all procedural limitations. Therefore, petitioner argues, if section 78-12-31.1 is deemed procedural, it is unconstitutional because it was not created by the Utah Supreme Court. Br. of App. at 13.

Petitioner's argument is unfounded. A close reading of Article VIII, Section 4 reveals that it grants the supreme court only the power to adopt Court rules of procedure (e.g., Rules of Civil Procedure, Rules of Evidence, Rules of Appellate Procedure).

However, section 78-12-31.1 is not a rule of procedure, but rather a statutory provision which is procedural in nature. Since section 78-12-31.1 is a statute of limitation, rather than a rule, it does not fall within the boundaries of Article VIII, Section 4.

Furthermore, Article VI, Section 1 of the Utah Constitution grants the Utah Legislature the power to create the laws of the state of Utah. Utah Const. art. VI, § 1. The Utah Supreme Court has held that the legislature has every law-making power that is not expressly or impliedly withheld by federal or state constitution. See State ex rel. Stain v. Christensen, 35 P.2d 775 (Utah 1934). See also Lehi City v. Meiling, 48 P.2d 530 (Utah 1935). Petitioner fails to cite a constitutional provision reserving to another branch of government the power to create statutes of limitation, and the State is unaware of any such provision. Therefore, petitioner's claim lacks merit.

C. Section 78-12-31.1 Contains A Provision For Excusable Delay.

Contrary to petitioner's assertions, section 78-12-31.1 allows for excusable delay, since it is a procedural bar only as to grounds a petitioner should have been aware of "through the exercise of reasonable diligence." Utah Code Ann. § 78-12-31.1. Therefore, a petition raising issues that could not have reasonably been discovered within 90 days will not be procedurally barred. Whether a claim could have been discovered through the exercise of reasonable diligence depends on the facts of each case, but the foregoing demonstrates that section 78-12-31.1 allows for excusable delay. Therefore, petitioner's claim is unfounded.

D. The Statute Of Limitations For Habeas Corpus Actions Is A Reasonable Procedural Limitation Under The Facts Of This Case.

In order to be constitutional, "a statute of limitation must allow a reasonable time for the filing of an action after a cause of action arises." Berry v. Beech Aircraft Corp., 717 P.2d 670, 672 (Utah 1985). What constitutes a reasonable amount of time to bring a given cause of action depends upon various factors, including the nature of the action, the interests of government and the interests of the litigant. Davis, 443 N.W.2d at 710. The mere fact that the limitation period found in section 78-12-31.1 is relatively short does not in itself create a presumption of unreasonableness.

The Oregon Court of Appeals has held that Oregon's 120-day limitation period for bringing habeas corpus actions is reasonable. Bartz v. State of Oregon, 825 P.2d 657 (Or. App. 1992). The Arizona Court of Appeals has held that a 30-day limitation period for an action by a lessor of motor vehicles to recover license tax was not unreasonable. Shaw v. State, 447 P.2d 262 (Ariz. App. 1968). The limitation period cannot be evaluated under a generic standard, but must be reviewed in light of the circumstances of the case and the nature of the proceedings.

In determining the reasonableness of a specific statute of limitations, the Court must first consider the purpose for which the statute was created. A core purpose for the limitation found in section 78-12-31.1, as with all limitation periods, is to compel the exercise of a right of action within a reasonable time so as to

avoid stale claims where evidence no longer exists and memories have faded. Horton v. Goldminer's Daughter, 785 P.2d at 1098 (Utah 1989).

Under section 78-12-31.1, individuals who claim unlawful restraint of their liberty must file a habeas action within 90 days of discovery of the claim or the time the claim should have been discovered. The relatively short limitation period requires prompt action to have the legality of restraint adjudicated. This permits the courts to review habeas petitions while relevant evidence is still fresh and records are available. It further promotes the finality of the judgment leading up to the restraint. Habeas corpus petitions brought in a timely manner conserve state resources and prevent lawfully incarcerated inmates from intentionally waiting years to file actions and then benefitting from fading memories and forgotten or unobtainable witnesses. This was the very reason the Utah Legislature enacted section 78-12-31.1. See Tr. of Senate Debate on S.B. 245 (Addendum A); Tr. House Debate on S.B. 245 (Addendum B). The enactment was further intended to curtail prison inmates from filing belated suits against the State, resulting in increased litigation expenses, burdens, and delays that otherwise would not be present. Id.

When an inmate files a habeas petition challenging a conviction or sentence long after its occurrence, as in petitioner's case, it can often result in an effective acquittal of the underlying criminal conviction where one is not justified. When a conviction or sentence is invalidated by a court in a habeas

proceeding, the matter usually returns to the trial court for correction of underlying error. This may require a new trial. However, when a long period of time has elapsed since conviction and sentence, witnesses and evidence may be unavailable, rendering the State unable to re-prosecute the case. Thus, the result is the equivalent of an unjustified acquittal.

Section 78-12-31.1 also assures the State and the courts that they can rely on the finality of their actions after a three month period has elapsed. Finality of judgment is not only important to the State and agencies subject to habeas corpus review, but it is vitally important to the victims and witnesses of criminal behavior who desire to put the incident behind them and continue their lives. See Brown v. Turner, 440 P.2d 968, 969 (Utah 1968)

Another factor to be considered in determining the reasonableness of the 90-day limitation period, is the burden placed on a petitioner by the limitation. Habeas corpus proceedings are unique from other civil actions in that they uniformly arise out of administrative and judicial proceedings where the actions giving rise to the claim for relief are readily ascertainable. The overwhelming majority of habeas corpus petitions challenge decisions made and actions taken at trial and sentencing, Board of Pardons' hearings, and prison disciplinary proceedings. Long periods of time are not necessary to formulate the ground(s) for habeas corpus relief. The very nature of the proceedings from which relief is sought makes the claim(s) available immediately. In this sense, a habeas action is similar

to an appeal from a criminal conviction, where the notice of appeal must be filed within 30 days of the entry of the judgment of conviction. Any errors at trial that provide a basis for appeal are presumed readily ascertainable, and if not challenged within 30 days, appeal of those errors is waived.

Moreover, section 78-12-31.1 provides relief from the relatively short limitation period by specifically incorporating a tolling provision for justifiably unknown claims.

Finally, the 90-day limitation period is reasonable given that inmates seeking habeas relief are provided free access to competent legal assistance by the incarcerating institution. Bounds v. Smith, 430 U.S. 817 (1977); Bee v. Utah State Prison, 823 F.2d 397 (10th Cir. 1987). Inmates do not face the delays or obstacles generally associated with locating, retaining and compensating an attorney for legal assistance. This enables the inmate to promptly identify potential habeas claims and seek redress in the courts.

Under the facts of this case, the 90-day limitation period contained in section 78-12-31.1 is reasonable. In his petition, petitioner claimed that he received ineffective assistance of counsel during plea proceedings and at sentencing. Any alleged errors providing a basis for a habeas petition were readily ascertainable within 90 days of petitioner's sentencing. Therefore, the 90-day period is a reasonable procedural limitation with respect to petitioner's case.

II. THE SEVENTH JUDICIAL DISTRICT COURT PROPERLY DISMISSED THE PETITION PURSUANT TO THE STATUTE OF LIMITATIONS CONTAINED IN SECTION 78-12-31.1.

Petitioner was convicted on October 3, 1988 and was sentenced on April 3, 1989. However, petitioner did not file his habeas petition until April 16, 1992, over thirty-six months after his sentencing. Petitioner's petition was approximately thirty-three months late. At the latest, he should have known of his claims regarding counsel's effectiveness during the plea and sentencing proceedings within three months after he was sentenced.

Even petitioner's claim that Raymond Marquez recanted his incriminating testimony is untimely. Marquez's affidavit was notarized on October 28, 1991. Thus, petitioner should have raised this claim no later than January 28, 1992. The foregoing demonstrates that the district court properly dismissed petitioner's petition as time-barred pursuant to section 78-12-31.1.

CONCLUSION

Section 78-12-31.1 is a permissible procedural limitation under the Utah Constitution. It does not suspend the writ of habeas corpus, but merely limits the time-period in which a petition may be filed. Section 78-12-31.1 also does not violate Article VIII, Section 4 of the Utah Constitution since it is not a rule of procedure.

The 90-day limitation allows for excusable delay by barring only those claims which should have been discovered through the

exercise of reasonable diligence. Furthermore, the statute is reasonable as applied to petitioner's case. Petitioner should have been aware of the grounds for his petition within 90 days of his sentencing. Therefore, the district court properly dismissed the petition as time-barred pursuant to section 78-12-31.1.

Based on the foregoing, the Court should affirm the dismissal of the petition for writ of habeas corpus.

RESPECTFULLY submitted this 1 day of December, 1992.

ANGELA F. MICKLOS
Assistant Attorney General

CERTIFICATE OF MAILING

I hereby certify that a true and accurate copy of the foregoing BRIEF OF APPELLEE was mailed, postage prepaid, this 7 day of December, 1992 to:

Stephen Currier
Appellant Pro Se
P.O. Box 250
Draper, Utah 84020

A D D E N D A

A D D E N D U M A

SENATE CHAMBER
STATE OF UTAH
SALT LAKE CITY

CERTIFICATION OF LEGISLATIVE TRANSCRIPT

I hereby certify that the attached document consisting of six (6) signed pages is a true and authentic copy of the Utah State Senate floor debate of Senate Bill No. 245, 1979 General Legislative Session, Disk No. 296, dated March 3, 1979.

Annette B. Moore, Leadership Secretary 4/1/92

Name Title Date

TRANSCRIPTS OF SENATE DEBATE ON SENATE BILL NO. 245
MARCH 3, 1979

DOCKET CLERK: Senate Bill No. 245 Habeas Corpus Time Limitations. There is a report, Mr. President. Your committee on Judiciary, to which was referred Senate Bill No. 245, Habeas Corpus Time Limitations, by Senator Barlow, has carefully considered the bill and reports the same out favorably, with the recommendation that the original bill be deleted in body and title and Substitute Senate Bill No. 245 be inserted in lieu thereof. Respectfully, Senator Asay, Committee Chairman.

SENATOR ASAY: Mr. President.

PRESIDENT FERRY: Senator Asay.

SENATOR ASAY: I move the option of the committee report.

PRESIDENT FERRY: All in favor of motion say I? (VOTE TAKEN) Oppose? (VOTE TAKEN) Motion carried. Senate bill 245 is before us.

SENATOR BARLOW: Mr. President

PRESIDENT FERRY: Senator.

SENATOR BARLOW: Mr. President, the purpose of this bill, Senate bill 245, does two things. One denotes the first part where it says within three months, within 90 days. What it simply means is that it eliminates a device that is often utilized by defense counsel in post-conviction remedies, in order to use a series of habeas corpus actions, both there in the State and in the Federal Courts, to delay the eventual carrying out of the sentence of the Court. Now we are talking about once the conviction is made, then the device now is to show that for some reason the trial was ah not

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ah handled properly. Now this change is required of both parties who represent the defendant and who seek to use a habeas corpus, would be required in order to successfully use that legal post-conviction remedy, would only do so on grounds known to them, but would only do so that this was new information and that in ah that they should have known about it or should have been aware of it prior to this period because, two particular cases comes to my mind is the Hi-Fi case, in Ogden, and a motor cycle case up there in Carbon county.

This is what often happens is that the defense attorney will know of grounds to postpone the carrying out of the conviction but they won't say anything about it until after the trial. And it is not a case where the person might be innocent or guilty. That has already been determined. Now this becomes a delaying tactic. And then they throw in something that they had already known and should have brought before the court, but they didn't bring it before the court because it is very obvious that the party was guilty. And so, they throw one thing at you, and then you wait about a year till it has gone through its various channels, now you are about ready to carry out the sentence, and then they throw another thing at you until this thing is delayed, not only a year but two years and three years. Now the question is, . . . what this will do is, that it simple means that within ninety days, if you have anything that you had already known about but didn't say anything about, a reasonable person would have known, then you can't use that as evidence.

Now the next, now this is just on the habeas corpus. Now, I

am not an attorney and any of these attorneys could probably cut me to pieces if they want to.

Ms. Dunner, do we have a quorum? Mr. President? I don't want to talk to myself.

PRESIDENT FERRY: You actually calling the Senate?

SENATOR BARLOW: Well, if we vote on it, it doesn't make a difference but if its gonna to be . . .

PRESIDENT FERRY: If there is not a quorum present a . . .

SENATOR BARLOW: They ought to have . . .

PRESIDENT FERRY: We'll ask the Sergeant at Arms to require the Senators to take their seats. Please.

PRESIDENT FERRY: Senator Renstrom.

SENATOR RENSTROM: Senator Barlow asked me if I would say a word on this bill, and I would like to.

PRESIDENT FERRY: Go ahead even though nobody is listening.

SENATOR RENSTROM: I do considerable, . . . that's usually the case when I speak. I do a little bit of defense work, criminal defense work, not an awfully lot. But, I would write in support of this bill.

I think sometimes the appeal process is abused, and as I understand this bill, and I am not terrible optimistic this is going to solve all our problems but certainly it's not going to solve all our appellate problems before Federal Courts. But certainly at the conclusion of a trial, if the lawyer feels that there is something wrong with the trail or that there is something wrong with the law, that all of those should be attacked in an immediate appeal and not use sequential attacks one after the

other, and completing one attack, loosing, and then taking another attack, then loosing, but ultimately loosing only after years and years of expensive litigation. This bill I think would help to cure and put the responsibility on the lawyers and the defendants who are convicted to attack the trial, the law or what ever else that's loyal to them.

Now Senator Barlow has built into this, I think an important safeguard, and that is that should there be newly found evidence or some other unusual circumstances, at the last minute, that would justify a higher court looking at it, of course that higher court could. So I rise in support of the bill. I think it is a good bill. It is not going to solve all the problems, that is certain, but I think it is a major step in the right direction. Thank you, Mr. President.

PRESIDENT FERRY: Senator Asay.

SENATOR ASAY: Mr. President, could I ask probably Senator Renstrom, who is a member of the bar, a question here? As I told you, I don't understand the legal jargon, but I understand plain English. So in just plain English, what do the words habeas corpus mean?

SENATOR RENSTROM: Habeas corpus means to free the body. In other words, if you're in jail, I go down and get a writ of habeas corpus saying your body is unlawfully held, and a writ of habeas corpus would be to free your body from being unlawfully held.

SENATOR ASAY: Free the body or produce the body.

SENATOR RENSTROM: Produce the body.

SENATOR ASAY: Get you out of jail? (laughter)

SENATOR RENSTROM: Get you out of jail. Right.

SENATOR ASAY: If it means produce the body then instead of calling for a call of the Senate, we could just say habeas corpus. (laughter) Anyway, I want to speak in favor of this bill. A recent KSL editorial made the point that the Hi-Fi killers, for instance, that there has never been a question as to their quilt and the defendant had the due process of the law, but they've gone on an on. And the dollar figure now has exceeded a half a million dollars, and they're still going on and these so called technicalities where new evidences is being produced, and I think injustice is being done. So, I support this bill one hundred percent.

SENATOR RENSTROM: Mr. President, may I please just make one parting in comment. Sometimes, and I feel too often, lawyers are disabused because they paint the law that is available to them and do all they possibly can on behalf of their clients. I remember hearing a very well known international lawyer say once, "The reason lawyers seem to be distrusted or disliked is simply because they represent people." Now I do not fault any lawyer for doing his job, even if it might appear at times to the public that he is abusing the process. If you were charged with the responsibility of representing an individual, you must realize how trauma ridden you feel sometime when the family is there, and you feel responsibility to the client as well as to the public. And I am pleased with the editorials that the newspapers have made in regards to some of these cases, where they seem to go on for ever, and they are saying, "Don't blame the lawyer, blame the system."

This bill, I think, will be a step in the right direction to help correct the system.

PRESIDENT FERRY: If there's no more discussion? Answer, a question?

SENATOR BARLOW: Mr. President, I was wondering if the body felt pretty good about this bill if we could maybe get a motion to get it to the House or of any single person or Senator would like to hold it up I would be glad to just move to third reading calendar. If there is no objection, then I would like to move that we consider it read for the second or third time and up for final passage.

PRESIDENT FERRY: Senator Barlow moves that Senate Bill 244 [245] under suspension of rules be read for the second and third time and up for final passage. All in favor, say I. Opposed. Motion carries, and we will call for role call vote.

(Where as role call was taken as reported on page 1195 attached)

PRESIDENT FERRY: Senate Bill No. 245 final passage received 26 Ayes, no Nays, and three absents. Having been approved, will be sent to the house for their consideration.

**Voting recorded on page 1195 of the Senate Journal, dated Saturday, March 3, 1979 (attached).

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Page 8, Line 15 the $100 amount
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d reading on the following roll call:

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vere: Senators
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Swan
Waddingham
Wayment
Mr. President (Ferry)

re: Senators
ien Matheson
n Pace
Sandberg

ere: Senators
Cornaby

d to the House.

ADING CALENDAR

erter the rules were suspended with no
29, INSTITUTIONALIZED ELDERLY
cond and third times and placed on final

February 28, 1979

Services to which was referred S.B. No.
ELDERLY OMBUDSMAN, by Mr. Jack

W. Bangerter, et al., has carefully considered said bill and reports same favorably.

Respectfully,

Ronald T. Halverson
Committee Chairman

Committee report read and adopted.

S.B. No. 329 then passed second and third reading on the following call:

Yeas, 26; Nays, 0; Absent, 3

Voting in the affirmative were: Senators

Bay	Farley	Pugh
Bangerter	Finlinson	Renstrom
Barlow	Halverson	Snow
Black	Jeffs	Sowards
Bowen	Jensen	Swan
Bullen	Jones	Waddingham
Bunnell	Kimball	Wayment
Christensen	Matheson	Mr. President (Ferry)
Cornaby	Pace	

Absent and not voting were: Senators

Burton	Carling	Sandberg

S.B. No. 329 was transmitted to the House.

* * *

On motion of Senator Barlow the rules were suspended with no dissenting votes, and S.B. No. 245, HABEAS CORPUS TIME LIMITATIONS, was read the second and third times and placed on final passage.

February 27, 1979

Mr. President:

Your Committee on Judiciary, to which was referred S.B. No. 245, HABEAS CORPUS TIME LIMITATIONS, by Mr. Haven J. Barlow, has

carefully considered said bill and reports the same out favorably, wit the recommendation that the original bill be deleted in body and tit and Substitute S.B. No. 245 be inserted in lieu thereof.

Respectfully,

E. Verl Asay
Committee Chairman

Committee report read and adopted and Substitute S.B. No. 24 replaced the original bill.

Substitute S.B. No. 245 then passed second and third reading the following roll call:

Yeas, 26; Nays, 0; Absent, 3

Voting in the affirmative were: Senators

Asay	Cornaby	Renstrom
Bangerter	Farley	Sandberg
Barlow	Finlinson	Snow
Black	Jeffs	Sowards
Bowen	Jensen	Swan
Bullen	Jones	Waddingham
Bunnell	Kimball	Wayment
Carling	Matheson	Mr. President (Ferry
Christensen	Pugh	

Absent and not voting were: Senators

Barton	Halverson	Pace

Substitute S.B. No. 245 was transmitted to the House.

* * *

S.B. No. 155, ENERGY CONSERVATION CAPITAL IMPROVE MENTS, was read the second time.

February 27, 19

Mr. President:

Your Committee on Energy and Natural Resources, to which wa referred S.B. No. 155, ENERGY CONSERVATION CAPITAL IM

PROVEMENTS ACCOUNT, by Mr. fully considered said bill and reports following amendments:

Page 1, Line 16:
delete *"$500,000"* and ins

Page 5, Line 26:
delete *"$500,000."* and ins

Committee report, as amended,

Senator Finlinson proposed ame

On motion of Senator Finlinson t 155 circled on Second Reading Caler

* *

On motion of Senator Jones th dissenting votes, and S.B. No. 183 w and placed on final passage.

Mr. President:

Your Committee on Social Servic 183, MEDICAL BENEFITS RECO Jones, et al., has carefully considered favorably with the following amendi

page 4, Line 33:
insert the following as ne
"(4) The department must bility to the third party or identification number, diag itemized charges, so the ca

A D D E N D U M B

HOUSE OF REPRESENTATIVES
STATE OF UTAH
318 STATE CAPITOL • SALT LAKE CITY 84114

1979 GENERAL SESSION
43rd LEGISLATURE, STATE OF UTAH

S.B. No. 245 PROBATE CODE AMENDMENTS
By Senator Haven J. Barlow

I hereby certify that the attached transcript, is a verbatim record of the discussion regarding S.B. No. 245, LIMITATIONS-HABEAS CORPUS AND POST-CONVICTION AND REMEDIES, by Senator Haven J. Barlow, which occurred in the House Chamber on March 7, 1979, and is recorded on Record #5 line 5 in the House Office.

Lida Hammond
Legislative Aide

March 31, 1992
Date certified

TRANSCRIPTS OF HOUSE DEBATE ON SENATE BILL NO. 245
MARCH 7, 1979

LIMITATIONS - HABEAS CORPUS AND POST-CONVICTION AND REMEDIES

MR. SPEAKER (HANSEN): Senator Bangerter.

REPRESENTATIVE BANGERTER: Mr. Speaker, I would move that we move 245 to the head of the third reading calendar. The representative that's here to handle that bill has an appointment with the court in about twenty minutes. It is such a short bill. I think we can handle that, and I would make that motion.

MR. SPEAKER: You saying that may keep him here an hour. You heard the motion. All members in favor say, "I." (VOTE TAKEN) Those opposed say No. (VOTE TAKEN) Motion carried. Representative Rawson.

REPRESENTATIVE RAWSON: I have a substitute motion. Mr. Speaker I was . . .

MR. SPEAKER: Representative, I have already ruled on that motion. I am sorry.

SENATOR RAWSON: What motion?

MR. SPEAKER: The motion to move 245 to the head of the third reading calendar and consider it. The motion was placed. It was seconded. The vote was called for and passed.

SENATOR RAWSON: Well, how about that. (laughter)

MR. SPEAKER: Representative, would you read that in. Madame Reading Clerk has that been read in?

READING CLERK: (inaudible).

MR. SPEAKER: Would you read it in please?

READING CLERK: Substitute Senate Bill No. 245, Limitations-

Habeas Corpus and Post-conviction and Remedies, by Senator Haven J. Barlow, being enacted by the legislature of the State of Utah.

MR. SPEAKER: Representative Sykes.

REPRESENTATIVE SYKES: Thank you very much Mr. Speaker. And I do appreciate your indulgence in this. Fellow Representatives, I got a little problem here. You've never faced the wrath of an angry Judge. Let me say, ah, just briefly about this bill. Many of you will recall the facts of a rather brutal and notorious murder that occurred in this state, in the city of Ogden, in April 1974, where ah two individuals brutally raped a young girl, shot her to death, poured Draino down the throat of a young man, and he remains maned to this day, killed two other individuals, and ah shot shot [sic] one other and left him for dead. Ah, this was known as the Hi-Fi murder case. The trial on this matter occurred in the fall of 1974, about October. Trial lasted for five weeks. The defendants in this case has two, ah, three of the best criminal attorneys in the state of Utah. Ah, the appeal in this matter was decided in December 1977. Many of you have wondered, perhaps from time to time, why some of these notorious murder cases, why ah the defendants who have been sentenced to death, ah three, sometimes three and five years ago, remain unexecuted and justice remains unexecuted to this day. And the reason is a little ah thing of the law known as habeas corpus.

Now habeas corpus is a constitutional challenge to any proceeding which leads to an individuals confinement. And the tactic of ah many criminal defense attorneys has been, long after the trial is over, long after the appeal is over, to file a habeas

corpus petition, sometimes right before the execution is or has been scheduled. A good example of this was in the case of Gary Gilmore, where a habeas corpus petition was filed on ah at 7:00 p.m. on Sunday night, when execution was scheduled for Monday morning. And this puts a tremendous burden on the State of Utah in responding to these matters. Ah. It ah is a almost impossible to do and often times, ah a almost always, the habeas corpus petition is based upon matters which were known or should have been known to the ah defendants and their attorneys, sometimes years before. But yet, they bring them up at the last minute. And the purpose of it is to simply to delay the execution of justice.

Now, Substitute Senate Bill No. 245 is a bill that places a statute of limitation upon ah habeas corpus petitions for matters that they either knew or should have been known, and it's within three months of when the the [sic] defense either knew or should have known of the alleged defects in the trial. Ah. A second part of that says, ah, in subsection (2) there, that no post-conviction remedy, which would include others other than habeas corpus, may be applied for or entertained by the Court within the 30 days prior to the scheduled execution, on grounds that they knew or should have known prior to that date. So this will, this will, do away with what's been known as a charade in the run of the law. Just a charade and a mockery of justice in bringing these last minute appeals based upon frivolous grounds. I would be happy to answer any questions. Other than that, I'd urge your favorable support of the bill that's past 26 to zero in the Senate. I hope that's not the knell of death in this body. But, it's a very good bill, and

it will help to put some sense into our judicial process in this state.

MR. SPEAKER: Thank you. Now to the bill. Representative Davis.

REPRESENTATIVE DAVIS: Mr. Speaker, a number of years ago, the Supreme Court found the Capital punishment to be unconstitutional, and the following morning, I introduced the capital punishment bill here in the House at 10:00. Later that afternoon, about 1:00, as I recall, a police officer was shot to death on Salt Lake City streets. The first time in 20 some years, I guess. Later the Criminal Code revision incorporated all of that, and we do have the capital punishment bill in our statutes.

I stand in support of Bob Sykes bill here today, and I hope that all of us will support this measure.

MR. SPEAKER: Thank you. Representative Richards? I see no further life sign, do you want to sum up?

REPRESENTATIVE SYKES: Thank you very much, I urge your favorable support of this bill.

MR. SPEAKER: Voting is now opened on Senate Bill No. 245. Would you quickly vote.

MR. SPEAKER: It appears to the chair that all present have voted on this bill. Voting will now be closed. Senate bill 245, having received 55 affirmative votes, and 5 negative votes has passed this house and shall be signed in open session.

The foregoing, Senate bill 245, was publicly read by title and immediately thereafter signed by the speaker of the house, in the presents of the house, over which presides and the fact at this

time we do enter upon the journal this 7th day of March 1979.

**Voting recorded on page 1513-14 of the House Journal, dated Saturday, March 7, 1991 (attached).

Garff	Nielsen	Whitesides
Garr	Olsen	Wilcox
Harmer	Palmer	Speaker Hansen
Harward	Parkin	

Absent or not voting: Representatives:

Arrington	LeFevre	Rogers
Brockbank	Pace	Selleneit
Farnsworth	Patterson	Smith
Harrison	Peterson, C.	Watt
Jorgensen	Peterson, G.	Wimmer
Leavitt		

H.C.R. No. 9 transmitted to the Senate for its action.

* * *

MISCELLANEOUS BUSINESS

On motion of Representative Bangerter, the House voted to advance Substitute S.B. No. 245, LIMITATIONS - HABEAS CORPUS AND POST-CONVICTION AND REMEDIES, to the head of the third reading calendar.

* * *

CONSIDERATION OF SENATE BILL ON THIRD READING

Substitute S.B. No. 245, LIMITATIONS-HABEAS CORPUS AND POST-CONVICTION AND REMEDIES, read the third time and placed on its final passage.

Substitute S.B. No. 245 then passed on the following roll call:

Yeas, 55; Nays, 5; Absent or not voting, 15.

Those voting in the affirmative were: Representatives:

Allred	Heslop	Peterson, C.
Arrington	Hollingshaus	Peterson, G.
Atwood	Humberstone	Peterson, L.
Bangerter	Irvine	Redd
Brown	Johnson	Reese
Cannon	Judd	Richards
Christensen	Knowlton	Rowe
Christiansen	Leavitt	Saunders
Davis	LeFevre	Schmutz
Dmitrich	McAllister	Selleneit
Doane	McKeachnie	Smith
Evans	McMullin	Starr
Farnsworth	Mecham	Stephens
Florez	Money	Sykes
Free	Olsen	Wahlstrom
Garff	Pace	White, J.
Garr	Palmer	Wilcox
Harmer	Parkin	Speaker Hansen
Harrison		

Those voting in the negative were: Representatives:

Bishop	Holbrook	Whitesides
Harward	Strong	

Absent or not voting: Representatives:

Brockbank	Jorgensen	Rogers
Fox	Livingston	Taylor
Gardner	Nielsen	Watt
Hawkes	Patterson	White, B.
Jones	Rawson	Wimmer

Substitute S.B. No. 245 was signed by the Speaker in open session, in the presence of the House, and forwarded to the Senate for the signature of the President, enrolling and transmission to the Governor.

* * *

MISCELLANEOUS BUSINESS